

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

Mahaveer Vs. State and anr.

SB CRIMINAL MISC.PETITION NO.323/2005
u/S.482 Cr.P.C.

Date of Order :-

13/11/2006.

PRESENT

HON'BLE MR.JUSTICE HARBANS LAL

Mr. N.S. Shekhawat for the petitioner.

Mr. Arun Sharma P.P. for the State.

BY THE COURT: -

This petition under Section 482 Cr.P.C. calls in question the order dated 16/3/2005 of the learned Additional Sessions Judge No.2, Bharatpur in Cr.Revision No.56/2005 whereby the revision petition has been dismissed and the order dated 1/3/2005 passed by the learned A.C.J.M. No.4, Bharatpur has been upheld.

2) The relevant facts are that one Smt.Birma Devi lodged First Information Report No.379/1999 at P.S. Kumher, District Bharatpur for offences u/Ss.302 and 34 I.P.C. alleging that her husband Naresh Kumar has been murdered by Mahaveer, Gauri Shankar, Ramgopal and Kanti Swaroop alias Pappu.

3) After investigation, Final Report No.111/1999 was submitted before the court of learned Additional Chief Judicial Magistrate No.4, Bharatpur who refused to accept the same on 1/3/2005 and directed that further investigation in the case may be made by an officer of the rank of Deputy Superintendent of Police. A revision

petition was preferred against the said order which came to be heard and disposed of by the learned Additional Sessions Judge No.2, Bharatpur with the observation that his revision being directed against an inter-locutory order was not maintainable. Hence, this petition challenging the orders dated 1/3/2005 and 16/3/2005 has been filed.

4) Learned counsel for the petitioner has contended on the strength of **Central Bureau of Investigation through, S.P. Jaipur Vs. State of Rajasthan and Anr. : 2001(1) Supreme 263** that the order directing further investigation by Dy.S.P. is incompetent and tantamounts to abuse of the process of the court. So, order impugned may be quashed.

5) Learned Public Prosecutor has supported the orders of the learned courts below.

6) It is true as held in the aforementioned authority that the learned Magistrate has no power to direct C.B.I. to conduct investigation into any offence. He can direct an officer-in-charge of a police station to conduct investigation into cognizable offence u/S.156(3) of the Code of Criminal Procedure, 1973; however, the High Court has power under Article 226 and the Supreme Court has power under Article 32 and 142(1) of the Constitution for giving such direction to the C.B.I to conduct investigation in certain cases of cognizable offences within a State without the consent of that State Govt. or without any notification or order having been

issued in that behalf under Section 6 of the Delhi Special Police Establishment Act, 1946 under which C.B.I. is an establishment. Section 36 of the Code of Criminal Procedure provides that *"police officers superior in rank to an officer-in-charge of a police station may exercise the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limit of his station"*. The Hon'ble Apex Court has held in the aforementioned authority that this means any other police officer who is superior in rank to an officer-in-charge of a police station can exercise the same powers of the officer-in-charge of a police station. When he so exercises the power he would do it in his capacity as officer-in-charge of the police station.

7) Therefore, no case is made out for interference in the impugned-order in exercise of the inherent powers of the court u/S.482 Cr.P.C. which, as per the settled law, are to be and ought to be exercised very sparingly and with circumspection to prevent the abuse of the process of the court or to secure the ends of justice. No such case having been made out this petition deserves to be dismissed.

Consequently, this petition having no merit and substance is hereby dismissed.

(HARBANS LAL), J.

anil

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

Mahaveer Vs. State and anr.

S.B.CR.MISC.STAY APPLICATION NO.399/2005
IN
S.B. CRIMINAL MISC.PETITION NO.323/2005
u/S.482 Cr.P.C.

Date of Order :- 13/11/2006.

PRESENT

HON'BLE MR.JUSTICE HARBANS LAL

Mr. N.S. Shekhawat for the petitioner.
Mr. Arun Sharma P.P. for the State.

BY THE COURT:-

This stay application u/S.482 Cr.P.C. is
disposed of in view of the disposal of the main
petition today.

(HARBANS LAL), J.

anil